

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
Request for Clarification filed by Maupin)	

**COMMENTS IN RESPONSE TO
PUBLIC NOTICE ABOUT
REQUEST FOR CLARIFICATION
FILED BY PATRICK MAUPIN**

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SUMMARY

This is a comment filed pursuant to [Public Notice DA 19-601](#) seeking comment on my [Request for Clarification](#).

I first wish to thank the Commission for opening a formal comment period on this important issue.

I am still interested in answers to the 3 numbered questions I posed in that request, but also, as I wrote in my request, “The footnote, liberally interpreted, could render the National DNC Registry powerless to stop such calls, and Requester would like the Commission to clarify that this is not the appropriate interpretation.”

To this end, the Commission’s analysis should start with whether the automobile manufacturer itself has an Established Business Relationship with a purchaser who buys a car at a dealer.

I do not think that the manufacturer does have such a relationship, by any of the plain wording in the original order, with the exception of the footnote. The footnote clearly contradicts the plain text of the rule, and the plain text of all the other text interpreting the rule.

As the Commission discusses in footnote 97 of its October 14, 2015 Order ([FCC 14-164](#)):

As noted in the FCC amicus brief where a conflict exists between the text and a footnote in the same agency Order, established precedent provides that “the text of the [agency’s] decision controls” (citing *United Steelworkers of Am., AFL-CIO v. NLRB*, 389 F.2d 295, 297 (D.C. Cir. 1967)). See *Nack* at 18-19 http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-312766A1.pdf). Our decision herein is not contradictory with this precedent as we uphold the validity of the rule; it merely acknowledges that such inconsistency has resulted in some confusion.

The present conflicting footnote should likewise be designated as not controlling in this instance, as it does not comport with any reasonable interpretation of the rule or other interpretive text.

Respectfully submitted,

/s/ Patrick Maupin

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